IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.54691-M of 2005

DATE OF DECISION: SEPTEMBER 27, 2006

Partap

...PETITIONER

VERSUS

The State of Haryana and others

....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Gorakh Nath, Advocate,
for the petitioner.
Mr.M.S.Sindhu, DAG, Haryana.
Mr.Hemant Bassi, Advocate,
for respondent No.3.

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JUDGMENT

Partap (complainant) has filed this petition under Section 482 of the Code of Criminal Procedure for issuing direction to the police to arrest Sahab Ram, the main accused in case FIR No.108 dated 21.9.2000 registered under Sections 302/307/148/149 IPC read with Sections 23/27/54/59 of the Arms Act at Police Station Nathusari Chopta, who was declared Proclaimed Offender in the month of December, 2002 and has not been arrested so far.

2. The brief facts of the case are that on 20.9.2002, a V.T.Message was received in Police Station, Nathusari Chopta from Civil Hospital, Sirsa to the effect that one Partap Kumar and Vikaram have been admitted in the hospital with firearm injuries whereas Vinod Kumar has been brought dead. Thereupon, the police officials rushed to the Civil Hospital, but the injured

were not in a position to make the statement. On the next date i.e. 21.9.2002, injured Partap Kumar (petitioner) made a statement to the police. on the basis of which, the aforesaid FIR was registered against Sahab Ram, his sons Rohtash, Parhlad, Vinod Kumar and one Krishan Kumar son of Bhura Ram with regard to the incident which took place on 20.9.2002. In his statement, Partap Kumar had stated that on 20.9.2002, he along with deceased Vinod Kumar and Vikram son of Hardutt were standing on the metalled road near the flour mill of Har Lal. In the meantime, Sahab Ram, his sons Parhlad, Rohtash and Vinod Kumar and one Krishan Kumar son of Bhura Ram came there. Sahab Ram and his sons were armed with .12 bore guns. Sahab Ram fired a shot with his gun at deceased Vinod Kumar which hit in his chest and right arm. Accused Vinod Kumar fired a shot with his gun at the petitioner. In the meantime, accused Parhlad fired a shot with his gun at Vikaram. In the said occurrence, Vinod Kumar died on the spot and the petitioner and Vikaram received serious gunshot injuries.

3. Subsequently accused Parhlad, Vinod Kumar, Rohtash and Krishan Kumar were arrested. However, accused Sahab Ram was absconding, therefore, he was declared Proclaimed Offender. During investigation, accused Vinod Kumar and Krishan Kumar were found innocent and the challan was submitted to the Court against Parhlad and Rohtash on 23.12.2002 whereas accused Vinod Kumar and Krishan Kumar were kept in column No.2. During the trial, on an application filed by the prosecution under Section 319 Cr.P.C., accused Vinod Kumar and Krishan Kumar were summoned as additional accused to face the trial along with other two accused.

4. During the pendency of the trial, one application was alleged to

have been moved by the relative of Sahab Ram to the Superintendent of Police, Sirsa praying that Sahab Ram was falsely implicated in the case as he was not present at village Makhusarani on the date of the alleged occurrence. The said application was stated to have been endorsed to Shri Chander Singh, DSP, Dabwali for enquiry. During the course of investigation, the affidavits of several persons were taken and it was found that at the time of the alleged occurrence on 20.9.2002, Sahab Ram was not present at village Makhusarani, rather he had gone to village Anandgarh Thereafter, Sahab Ram was allowed to join the investigation on 3.2.2003. His gun was taken into possession by the police. Later on, the police prepared the supplementary challan under Section 173(8) Cr.P.C. and put the same to the Court on 8.2.2003 with a prayer that accused Sahab Ram was found innocent and he may be discharged from the alleged offence.

5. During the pendency of the trial, petitioner Partap also filed Crl.Misc.No.37080-M of 2003 in this Court for issuing direction to respondent No.2-Superintendent of Police, Sirsa to get arrested Sahab Ram, Proclaimed Offender. The said petition was disposed of on August 19, 2003 after hearing both the counsel for the parties with a direction to the Superintendent of Police, Sirsa to look into the grievance of the petitioner and take appropriate action against Sahab Ram according to law. In spite of of the said direction, no step was taken against Sahab Ram, Proclaimed Offender.

6. From the police record, which has been produced in the Court by the Investigating Officer, it appears that after filing of the supplementary challan and the discharge application, the same was not pursued. Even in the police record, the application filed by the relative of Sahab Ram is not

available. Only 8 affidavits dated 27.1.2003 and 30.1.2003 were taken on record by Shri Chander Singh, DSP. From the record, it also reveals that on the same date, the said DSP submitted his report that accused Sahab Ram was not involved in the alleged occurrence as he was not present in the village on the date of the occurrence. It is also clear from the record that no permission for further investigation was taken from any superior authority or the Court. Subsequently, on the basis of the said report, supplementary challan was filed in the Court.

7. Ultimately, the trial Court vide its judgment dated May 2, 2005, convicted accused Vinod Kumar and Parhlad under Sections 302/307 read with Section 34 IPC. The other two accused, namely Krishan Kumar and Rohtash were acquitted from the charge framed against them. In the judgment, the involvement of Sahab Ram, Proclaimed Offender in the alleged occurrence was also observed. On the same date, the discharge report submitted by the police seeking discharge of accused Sahab Ram was also dismissed while observing as under:-

> "As regards the discharge report submitted by the police seeking the discharge of the accused Sahab Ram (since declared proclaimed offender), it may be mentioned that since in view of my findings and observations in the judgment of conviction dated 2.5.2005 it is observed and held that the accused Prahlad, Vinod Kumar with their co-accused Sahab Ram (since declared proclaimed offender) had fired with their respective guns at Vinod Kumar (since deceased) and injured Partap Kumar and Vikaram Singh in furtherance of their common intention on 20.9.2002 in the area of village

> Makhusarani, Distt.Sirsa, which resulted in the death of Vinod Kumar and firearm injuries to the injured Partap Kumar and Vikaram Singh and had fired at the injured with intention to cause their death, so I do not agree with the discharge report submitted by the SHO of Police Station, Nathusari Chopta against accused Sahab Ram. Hence the request of the police for discharge of accused Sahab Ram (since declared proclaimed offender) is declined and the prosecution may proceed against accused Sahab Ram in accordance with law."

8. Accused Sahab Ram challenged the aforesaid order in this Court by filing Crl.Misc.No.4797-M of 2006, but the same was dismissed as withdrawn. Thereafter, accused Sahab Ram did not challenge the said order in any other Court. It is pertinent to mention here that even the State has not challenged the said order, and the same has now become final.

9. In light of the aforesaid facts, counsel for the petitioner contends that accused Sahab Ram is the main accused. He was declared Proclaimed Offender in the month of December, 2002. Till date, he has not been arrested and put to trial whereas his two co-accused have already been convicted for the alleged offence. Learned counsel further submitted that in this case the local police under the influence of accused Sahab Ram, had wrongly prepared the supplementary challan on the ground that he was not present on the date of the occurrence in village Makhusarani and he was falsely implicated in the case. Learned counsel submits that under the political influence, an application was taken from some relative of Sahab Ram and the matter was entrusted to DSP, Dabwali for further investigation. During the investigation, 8 affidavits were taken on record on 27.1.2002 and

30.1.2003 and on 30.1.2003 a report was submitted by the DSP to the effect that Sahab Ram accused was innocent as he was not present on the date of incident at the place of occurrence. Counsel contends that all the affidavits, which were taken by the DSP, were given by the relatives and friends of accused Sahab Ram. On the same date, DSP gave the report about the innocence of accused Sahab Ram while totally ignoring the fact that immediately after the occurrence, the police went to the hospital for recording the statement of injured Partap Kumar, which was recorded immediately when he gained consciousness. In that statement, Sahab Ram was specifically named as the main accused who fired shot at Vinod Kumar due to which he died on the spot. Counsel further contends that even during the trial the involvement of Sahab Ram was established from the prosecution evidence. Counsel contends that the supplementary report submitted by the prosecution with the discharge application was not accepted by the court. The said order has become final. In spite of that, the local police has not taken any action to arrest Sahab Ram, Proclaimed Offender. Therefore, a direction should be issued to respondent No.2-Superintendent of Police, Sirsa to arrest Sahab Ram and to put him to trial in accordance with law.

10. On the other hand, counsel for respondent No.3 vehemently contended that no such direction could be issued in the facts and circumstances of the case. According to the learned counsel, respondent No.3 was found innocent during the police investigation. Thereafter, a supplementary challan was filed and respondent No.3 was kept in column No.2 and a prayer was made for his discharge as he was a Proclaimed Offender. Learned counsel submits that in case the trial Court was not

agreeing with the supplementary challan, then while rejecting the same, the trial Court should itself have taken cognizance of the offence, but the Court could not have dismissed the supplementary challan and the application for discharge. However, the learned counsel could not dispute the factual position that respondent No.3 did not challenge the order dated May 5, 2005 passed by the Addl.Sessions Judge, Sirsa, whereby the supplementary challan and the discharge application filed by the prosecution were dismissed. Learned counsel further submitted that when respondent No.3 was kept in column No.2 in supplementary challan, then the prosecution should have also filed an application against him under Section 319 Cr.P.C. Since no such application was filed, therefore, it should be taken that respondent No.3 was found innocent during the police investigation and thereafter he joined the investigation. Therefore, now it cannot be said that he is a Proclaimed Offender and a direction be issued for his arrest.

11. After hearing the counsel for the parties, I find substance in the contentions raised by the counsel for the petitioner. In this case, from the very beginning, respondent No.3 has been named as the main accused. As per the prosecution version, Sahab Ram fired a shot with his gun at deceased Vinod Kumar which hit in his chest on right side and right arm. The statement of the injured was recorded soon after he gained consciousness in which Sahab Ram was named as main accused. During the investigation which continued for three months, the police did not find any material on the basis of which it could have been said that respondent No.3 was not involved in the alleged occurrence. Rather, two accused, namely, Krishan Kumar and Vinod Kumar, were found innocent. It is also apparent from the record that during the entire investigation, respondent No. 3

remained absconding. He was declared as Proclaimed Offender in December, 2002. Thereafter, the challan was filed in the Court. After three months of the filing of challan, an application was moved by a relative of respondent No.3 which was directly entertained by the SP, Sirsa, and the same was marked to the DSP for further investigation on the same day. The DSP, Dabwali took 8 affidavits of the relatives and friends of respondent No.3 on record and submitted a report that respondent No.3 was not involved in the alleged occurrence as he was not present in the village on the date of the occurrence, and he was falsely implicated. In the police file, which has been brought by the Investigating Officer, no such application is available. Only 8 affidavits are available. It is stated that on the basis of the said report, the police submitted the supplementary challan along with an application for discharge of respondent No.3. Undisputedly, before conducting further investigation and submitting the supplementary challan under Section 173(8) Cr.P.C., no approval or formal permission was obtained from the Court. Though it is not mandatory, but the Supreme Court in Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 has observed that for further investigation, it is always desirable to obtain formal permission from the concerned court. It appears that after filing of the supplementary challan and discharge application, the same was not pursued by the prosecution. Rather from the final judgment of the trial Court, it appears that the prosecution examined the witnesses with the angle that Sahab Ram was the main accused. Rather his involvement in the crime has been duly proved before the Court by the prosecution witnesses. In the judgment it has been categorically found that co-accused Sahab Ram gave firearm injury to the deceased. In the judgment, everywhere respondent

No.3 was mentioned as Proclaimed Offender. In this case, throughout in the trial, the prosecution projected respondent No.3 as the main accused in spite of filing of the application for his discharge. It is pertinent to mention here that the order of Proclaimed Offender passed against respondent No.3 has not been set aside by the court till date. While deciding the main suit, the trial Court also rejected the supplementary report and dismissed the discharge application filed by the prosecution. The said order was challenged by respondent No.3 by filing Crl.Misc No.4797-M of 2006 but the same was dismissed as withdrawn. Even the said order was not challenged by the State. The same has become final. In view of these facts, in my opinion, respondent No.3 is still a Proclaimed Offender. Therefore, it cannot be taken that he stands discharged from the alleged offence. The contention of counsel for respondent No.3 that while dismissing the application of the prosecution for his discharge, the trial Court should have taken cognizance of the offence, cannot be accepted merely on the basis that at one point of time, the police submitted the supplementary challan finding him innocent. The manner in which the application from one of the relative of respondent No.3 was entertained by the Superintendent of Police and further enquiry was ordered, and the manner in which further investigation was conducted by the DSP, Sirsa, are not appreciable. From the police file, it appears that at one point of time the local police wanted to help respondent No.3.

12. In view of the aforesaid discussion, this petition is allowed and respondent No.2 is directed to take immediate steps to arrest Sahab Ram, Proclaimed Offender and put him to trial in accordance with law.

September 27, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE